

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LIONEL M. WALLEY,	§
	§ No. 572, 2010
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 30100217DI
Plaintiff Below-	§
Appellee.	§

Submitted: November 17, 2010

Decided: January 14, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

**ORDER**

This 14th day of January 2011, upon consideration of the opening brief, motion to affirm, and record on appeal, it appears to the Court that:

(1) The appellant, Lionel Wally, filed this appeal from the Superior Court's denial of his second motion for postconviction relief. The State has filed a motion to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Wally's opening brief that his appeal is without merit. We agree and affirm the judgment of the Superior Court.

(2) The record reflects that Wally was convicted in 1992 of Possession with Intent to Deliver Cocaine, Possession of Drug Paraphernalia and Resisting Arrest. Pursuant to title 11, section 4214(b) of the Delaware Code, the Superior

Court declared Walley to be a habitual offender and sentenced him to life imprisonment. This Court affirmed his convictions and sentence on direct appeal.<sup>1</sup> Thereafter, Walley filed unsuccessful motions seeking correction of his sentence and postconviction relief. In June 2010, Walley filed his second motion for postconviction relief, which the Superior Court denied. This appeal followed.

(3) In his opening brief on appeal, Walley argues that the Superior Court abused its discretion in summarily denying his motion for postconviction relief because it failed to consider a new statute that would impact Walley's life sentence as a habitual offender. In fact, however, the legislation Walley cites, House Bill 443,<sup>2</sup> has no impact on his life sentence as a habitual offender. Walley was convicted in 1992 of possession with intent to deliver cocaine in violation of title 16, section 4752 and was sentenced as a habitual offender pursuant to title 11, section 4214(b). The new legislation, while making changes to both statutes, specifically designates *former* section 4752, the statute pursuant to which Walley was convicted, as a predicate felony offense subject to the life sentencing provision of section 4214(b).<sup>3</sup> Thus, the new legislation has no impact on Walley's sentence. Accordingly, we find no error in the Superior Court's summary dismissal of Walley's second motion for postconviction relief. The motion was both untimely and repetitive and Walley failed to overcome these procedural hurdles.

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<sup>1</sup> *Walley v. State*, 1993 WL 78221 (Del. Mar. 17, 1993).

<sup>2</sup> H.B. 443, 145<sup>th</sup> Gen. Assem. (Del. 2010) (enacted).

<sup>3</sup> *See id.*, § 10(ii).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland  
Justice